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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,576	03/31/2004	Arthur L. Babson	00390060AA	4328
30743	7590	04/27/2006		
WHITHAM, CURTIS & CHRISTOFFERSON, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			EXAMINER SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/813,576

Applicant(s)

BABSON ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 2-13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if the vessels are required elements of the claimed structure, or merely mentioned with respect to what the conveyor element is intended to hold.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 6, 7, 10, 12, 13, 15, 16, 20 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Gazeau et al. (US 6,837,843). Regarding claim 1, Gazeau ('843) discloses an agitator assembly comprising a conveyor element (11 or a portion thereof) which includes a plurality of vessel holders (10), said conveyor element being movable along a path; and a vessel agitator (16) positioned adjacent said conveyor element at a location along said path. The assembly would be capable of being used in the manner discussed in the claim. Regarding claim 2, Gazeau ('843) discloses an agitator assembly comprising a conveyor element (11 or a portion thereof)

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which holds a plurality of vessels (1 including 13), said conveyor element being moveable along a path; and a vessel agitator (16) positioned adjacent said conveyor element at a location along said path where said plurality of vessels contact said vessel agitator as said conveyor element moves along the path and said agitator includes a plurality of troughs and projections, whereby each of said plurality of vessels are caused to move in direction generally perpendicular toward and away from said path by said plurality of troughs and projections (see Fig. 2). Regarding claim 3, the agitator is made from more than one component (see Fig. 2). Regarding claims 6 and 7, the distance between adjacent projections and between adjacent troughs is uniform (see Fig. 2). Regarding claim 10, the depth of troughs of said agitator is uniform (see Fig. 2). Regarding claim 12, the distance said projections project toward said vessel agitator relative to said conveyor is uniform (see Fig. 2). Regarding claim 13, the vessel agitator is stationary (see Fig. 2). Regarding claim 15, said path has one or more turns (see Fig. 2). Regarding claim 16, the assembly has means for allowing the conveyor to follow a path which is nonlinear. Regarding claim 20, this claim only discuss an analyzer with is not part of the claimed structure. Regarding claim 22, Gazeau ('843) discloses a method of passively agitating vessels in a chemical analyzer, comprising the steps of conveying one or more vessel (1) held in a conveyor element (11) along a path; and agitating said vessels with a stationary vessel agitator (16) positioned adjacent said conveyor element at a location along said path where said plurality of vessels (1) contact said stationary agitator as said conveyor element moves along said path, wherein said stationary vessel agitator includes a plurality of troughs and projections,

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whereby each of said vessels is caused to move in a direction generally perpendicular toward and away from said path by said plurality of troughs and projections (see Fig. 2).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 5, 8, 9, 11, 14, 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gazeau et al. (US 6,837,843). The assembly of Gazeau ('843) was discussed above. Regarding claims 4, 5, 8, 9, 11 and 14, while the reference does not expressly disclose varying the parameters mentioned in these claims, the discussion of "variable amplitude" in col. 2, lines 63 and col. 3 line 3 would have suggested these variations to one of ordinary skill in the art. Regarding claims 17-19 and 21, phrases such as "Incubation is performed at 50 °C for 3 to 4 hours with occasional agitation" (col. 3, lines 45-46) and "All of these steps are performed in the equipment according to the invention without removing the tubes (1) from the rotor (11)" (col. 3, lines 53-55) would have suggested housing the conveyor and agitator in an incubator.

6. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gazeau et al. (US 6,837,843) in view of Royer et al. (US 5,86,243). The assembly and method of Gazeau et al. (US 6,837,843) were discussed above with regard to claims 1 and 22, respectively. A belt is not disclosed; instead the conveyor is a rotating

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structure (11). Royer et al. ('243) is relied upon as evidence that an endless belt and a rotating structure are art-recognized alternative types of conveyors (see col. 16, lines 49-51). It is considered that it would have been obvious to one of ordinary skill in the art to have substituted a belt for the rotating structure of Gazeau, because an endless belt and a rotating structure are art-recognized alternative types of conveyors as evidenced by Royer et al. ('243) (see col. 16, lines 49-51).

### ***Response to Arguments***

7. Gazeua ('843) discloses vessels and vessel holds traveling along a generally circular path. However, troughs and projections of stationary agitator (16) contact the vessel and cause generally perpendicular deviations from the path, just as in the case of the instant invention.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

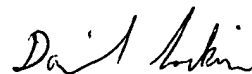
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS